the depositor's trustee in bankruptcy. See *Hoffman* v. *Schoyer*, 143 Ill. 598, 28 N. E. 823. The reasons assigned for this undoubtedly just result are various. Some courts find only an equitable lien, based upon estoppel. *Hoffman* v. *Schoyer*, *supra*. But the elements of estoppel appear to be lacking. See *Bryans* v. *Nix*, 4 M. & W. 775, 794. This theory, however, accounts for the dictum of the principal case that innocent purchasers of the new goods would prevail. By analogy to gifts delivered without the donee's knowledge, resort may also be had to the fiction of presumed assent, which would give the holder of the receipt actual title to the substituted goods, subject only to his own disclaimer. *Thompson* v. *Leach*, 2 Vent. 198, 3 Lev. 284; *Jones* v. *Swayze*, 42 N. J. L. 279. Upon this ground, the courts have sustained against third persons the claim of the holder of a bill of lading to goods subsequently shipped on account of the bill. *Lovell* v. *Newman*, 192 Fed. 753; *The Idaho*, 93 U. S. 575. See 25 HARV. L. REV. 555, 570. *Cf. Bryans* v. *Nix*, *supra*. Perhaps the best explanation of the result, however, is that the subsequent assent of the holder of the receipt relates back, and vests title in him from the time of the substitution. The fiction of relation, it is true, is not usually allowed to defeat intervening rights of third persons. *Bird* v. *Brown*, 4 Ex. 786; *Norton* v. *Alabama National Bank*, 102 Ala. 420, 14 So. 872. But where the transaction is so far completed that there has been an actual delivery of possession to a depositary, it seems not unjust to allow this relation back. *Grove* v. *Brien*, 8 How. (U. S.) 429. The creditors in the principal case have certainly not been injured by any possession in the debtor and should have no claim. And it is submitted that the dictum of the court that an innocent purchaser would prevail is unsound whether presumed assent or ratification be adopted as the ground of decision.

BOOK REVIEWS.

JUSTICE AND THE MODERN LAW. By Everett V. Abbot, 1913. Houghton, Mifflin and Company, pp. xiv, 299.

In the introduction (p. xiii) Mr. Abbot says: "The following pages are intended to help in the eternal conflict between established custom and justice. The first chapter is intended to exhibit the ultimate principles of justice as actually existent in the law, illustrated by cases in which they can be readily applied in the present, although they have never been so applied in the past. The second and third chapters are intended to exhibit something of the obstacles by which the progress of justice is impeded. They exhibit both the ignorance and the disingenuousness which enter into the administration of the law and which are still to be overcome. The last chapter is intended to suggest practical methods of avoiding error and detecting sophistries in the actual treatment of legal problems."

Justice is said to be (p. 3) "only the application of ethics to human affairs." The principles of ethics to be thus applied are three: the right of freedom, the duty to help, and "the reciprocating rights and duties of contract, which are, of course, solely defined by the terms of the contract itself." From this it will be seen that Mr. Abbot has not progressed much, if any, beyond the individualistic natural-right philosophy of the nineteenth century. The attempt to deduce a system of law from premises such as these has not been more successful in Mr. Abbot's case than in the cases of those who have preceded him.

Mr. Abbot's "natural right of freedom" leads him almost inevitably to the conclusion (p. 28) that inheritance taxes are unjustifiable and constitute a tak-

ing of private property for a public use without compensation, and "both the testator and the living beneficiaries of his bounty are denied the equal protection of the laws." Strangely enough, *Nunnemacher* v. *State*, 129 Wis. 190, is not cited.

Immediately follows the rather startling charge, that "It is not creditable to the American bar that it has . . . permitted its client's property to be seized upon the flimsy pretext that a man has no right to execute a transfer of his property to take effect at his death without the consent of the state."

Throughout, Mr. Abbot fails to see clearly the existence of social interests requiring protection. To him, apparently, the law has little or no purpose apart from the protection of the individual. His "liberty" is merely individualistic self-assertion. His "altruism" rests upon no broader foundation. For this reason, if for no other, Mr. Abbot's book fails to accomplish the purpose so eloquently set out in the introduction.

Mr. Abbot's criticisms of existing practice and administration, in chapters 2 and 3, are vigorously, perhaps too vigorously, stated; but with much of it there will be agreement. His remedy for most of our juristic evils is distressingly simple. He says (p. 283), "There is no obstacle to the attainment of a system" (apparently an ideal system) "of justice save our reluctance to take pains to think correctly." Correct thinking seems to be little more than the use of "the abstract processes of reason." Our salvation, therefore, lies in logic, or, as Mr. Abbot prefers to put it, "reason." The period of the schoolmen is Mr. Abbot's Golden Age; the syllogism his philosopher's stone by which the base juristic metal of to-day is to be transmitted into the fine gold of perfect achievement. E. R. J.

THE SUPREME COURT AND ITS APPELLATE POWER UNDER THE CONSTITUTION. By Edwin Countryman. Albany: Matthew Bender & Company. 1913. pp. xxi, 282.

"There are," the preface says, "a few important decisions of the court of last resort, in which it has declined to exercise its appellate jurisdiction; and as this special interpretation of the judicial power is equivalent to a refusal of the court in many cases to act as a check upon the official action of the executive and Congress, this work is principally composed of a series of strictures upon those particular decisions."

Yet the author wholly fails to gratify the interest naturally excited by such an announcement.

The arrangement of the book is so obscure that to follow the line of thought is impracticable.

For example, the first chapter deals with matter not very pertinent to the subject, and goes backward and forward through history in a fashion very perplexing, the subdivisions being entitled: "Origin and Organization"; "The Last Reorganization, a Coercive Measure to Secure Judicial Approval of Legal Tender Provisions"; "Similar Legislation to Prevent Exercise of Jurisdiction by the Court"; "Equally Indecorous and Unwarranted Treatment of the Court by the Executive in Refusing to Execute its Final Judgment Overruling the Decision of a State Tribunal in 1832"; "The Legislation of 1801, Repealed in 1802, a Partisan and Reprehensible Effort to Create Additional Judges and Courts before they were Needed"; "Senatorial Condemnation of President Jackson in 1834 a Violent and Unjustifiable Proceeding"; "The Dred Scott Case, an Example of Judicial Subservience to Political Influence"; "Partisanship Predominant Influence with Senators"; "Senatorial Partisanship on Trial of Impeachment of President Johnson"; "Relentless Partisanship of Electorial Commission"; "the Judiciary Proper Subjects of Criticism"; "Partisan Motives the Prevailing Rule in the Appointment of Judges"; "Many Able and Several Pre-eminent